

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CLARENCE RAY, JR.,)	Case No.: No. 1:96-cv-06252-LJO
)	
Petitioner,)	
)	ORDER AUTHORIZING STATE COURT
v.)	APPEARANCE IN ANCILLARY MATTER
)	
KEVIN CHAPPELL, Warden of San)	
Quentin State Prison,*)	
)	
Respondent.)	
)	
)	

Counsel for petitioner, CLARENCE RAY, JR., has notified the Court that the California Supreme Court issued an order in *In re Ray*, No. S110219, directing the Secretary of the Department of Corrections and Rehabilitation to show cause in the Superior Court of Kern County, when the matter is placed on calendar, why petitioner's death sentence should not be vacated and petitioner sentenced to life imprisonment without the possibility of parole on the ground that he is mentally retarded under *Atkins v. Virginia*, 536 U.S. 304 (2002). .

This claim must be exhausted before this Court may consider it. This Court finds that such exhaustion proceedings falls within "other appropriate motions and procedures" within the meaning of 18 U.S.C. § 3599(e), such that it is appropriate for federal counsel to conduct exhaustion proceedings on the claim. *See Harbison v. Bell*, 556 U.S. 180, 190, n.7 (2009).

* Kevin Chappell, Warden, is substituted for his predecessor Wardens pursuant to FRCP Rule 25(d).

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2 The request of petitioner's counsel to memorialize this finding by means of this order is
3 granted.
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5 IT IS SO ORDERED

6 Dated: September 6, 2013

7 /s/ Lawrence J. O'Neill
8 Lawrence J. O'Neill
9 United States District Judge
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